

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Acceleration of Broadband Deployment)	WC Docket No. 11-59
Expanding the Reach and Reducing the Cost)	
of Broadband Deployment by Improving)	
Policies Regarding Public Rights of Way and)	
Wireless Facilities Siting)	

**REPLY COMMENTS OF
THE CITY OF FONTANA, CALIFORNIA**

The City of Fontana, California, files these reply comments in the above-captioned matter to address an unfounded criticism of the City, and to discourage the Commission from interfering with the City’s successful practices based on such baseless industry allegations. In its opening comments,¹ PCIA—The Wireless Infrastructure Association and the DAS Forum (collectively, “PCIA”) asserts that the City subjects collocation applications to a full zoning review and hearing.² This is simply incorrect. We urge the Commission to recognize that such unsworn, unserved allegations provide no basis for Commission regulation of local practices.

I. PCIA MISCHARACTERIZES THE CITY’S WIRELESS FACILITY SITING PRACTICES.

PCIA includes the City on a list of a jurisdictions where it claims that “[r]egardless of the status of the existing tower, collocation applications . . . must go through a full zoning review and hearing. One must obtain a variance or special use permit for each new collocation on a

¹ Comments of PCIA—The Wireless Infrastructure Association and the DAS Forum (a Membership Section of PCIA), WC Docket No. 11-59 (July 18, 2011) (“PCIA Comments”).

² PCIA Comments at Exhibit B, p.7.

tower.”³ PCIA has included the City on this list in error. The City generally does *not* require collocation applications to go through a full zoning review or hearing, or to obtain a variance or special use permit.

The City’s wireless facilities ordinance—which the City updated in 2010 to clarify its siting process—makes this clear. It provides that “[c]ollocation facilities that meet the requirements of section 32-5 shall *only* be subject to the requirements of that section.”⁴ In turn, Section 32-5(a) provides that any collocation application satisfying California Government Code Section 65850.6 “shall *not* be subject to the standards, requirements and procedures applicable to new towers and antennas contained in any other section of this chapter.”⁵ Such applicants must only obtain a building permit, and demonstrate that the proposed collocation “compli[es] with the underlying CUP and/or ASP and any conditions of approval.”⁶ Since 2010, the City has processed a number of applications under this procedure. Thus, the City’s requirements are virtually the opposite of what PCIA claims. If PCIA had either reviewed the City’s code (which is available online) or contacted us, it could have easily confirmed this.

Contrary to PCIA’s implication, the City is not aware of any problems in its processing of wireless facility applications. Since the City revised its ordinance, it has not denied a single application.

³ PCIA Comments at Exhibit B, p.7.

⁴ Fontana Code of Ordinances § 32-3(e) (emphasis added)

⁵ Fontana Code of Ordinances § 32-5(a) (emphasis added).

⁶ Fontana Code of Ordinances § 32-5(b).

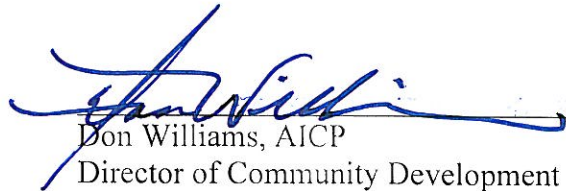
II. THE COMMISSION SHOULD NOT REGULATE LOCAL WIRELESS FACILITY SITING PRACTICES.

PCIA's baseless criticism of the City underscores that even if the Commission had authority to regulate these local practices (it does not),⁷ the current record would not permit it to do so. Like all industry commenters in the proceeding, PCIA did not serve its comments on any named community, and it did not verify its comments with a declaration or affidavit. Accordingly, the industry's allegations prove little. If the City can be targeted erroneously, so, too, can many of other communities that the industry has named.⁸ Moreover, these highly questionable, anecdotal criticisms are trumped by local governments' comments, which show that federal regulation of these inherently local matters is not justified or permitted.

CONCLUSION

The Commission should not rely on PCIA's erroneous criticism of the City or other similar claims, and it should refrain from taking any action to regulate local wireless facility siting practices.

Respectfully submitted,



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⁷ See Comments of the National League of Cities *et al.*, WC Docket No. 11-59, at 52-67 (July 18, 2011). The City supports the comments filed by these national local government associations.

⁸ If any action is appropriate, it is the case-by-case approach that Congress adopted under the Communications Act. See 47 U.S.C. §§ 253(d), 332(c)(7)(B). Only this will allow for proper scrutiny of the industry's claims.